

Finocchiario, Marco

From: Montgomerie, Robert
Sent: Monday, March 15, 2021 10:41 AM
To: Feinmark, Phyllis; Finocchiario, Marco
Subject: FW: Yaraghi Realty LLC, Block 58, Lot 1 Franklin Township, Warren County / Correspondence from National Park Service and USEPA re Musconetcong River Wild and Scenic Rivers designation
Attachments: ATT00001.txt



From: Anderson, Ryan <Ryan.Anderson@dep.nj.gov>
Sent: Thursday, March 11, 2021 11:30 AM
To: Montgomerie, Robert <Montgomerie.Robert@epa.gov>; Ryan, Patrick <Patrick.Ryan@dep.nj.gov>; Finocchiario, Marco <Finocchiario.Marco@epa.gov>
Cc: Tropiano, Michael <Michael.Tropiano@dep.nj.gov>
Subject: RE: Yaraghi Realty LLC, Block 58, Lot 1 Franklin Township, Warren County / Correspondence from National Park Service and USEPA re Musconetcong River Wild and Scenic Rivers designation

Bob
We did receive permission to visit the site separately. However, the 17th doesn't work for us. Our attorney is reaching out to Neil to distribute new dates to all of us so we can find something that works.
Ryan

From: Montgomerie, Robert <Montgomerie.Robert@epa.gov>
Sent: Thursday, March 11, 2021 10:58 AM
To: Ryan, Patrick <Patrick.Ryan@dep.nj.gov>; Finocchiario, Marco <Finocchiario.Marco@epa.gov>
Cc: Tropiano, Michael <Michael.Tropiano@dep.nj.gov>; Anderson, Ryan <Ryan.Anderson@dep.nj.gov>
Subject: [EXTERNAL] RE: Yaraghi Realty LLC, Block 58, Lot 1 Franklin Township, Warren County / Correspondence from National Park Service and USEPA re Musconetcong River Wild and Scenic Rivers designation

Hi Pat,

Re-reading the message from our attorney, EPA was given access only . If DEP wishes to attend, we can reach out to Mr. Yosikin and the property owner.

Thanks.

Bob

From: Ryan, Patrick <Patrick.Ryan@dep.nj.gov>
Sent: Thursday, March 04, 2021 6:03 PM
To: Finocchiario, Marco <Finocchiario.Marco@epa.gov>; Montgomerie, Robert <Montgomerie.Robert@epa.gov>
Cc: Tropiano, Michael <Michael.Tropiano@dep.nj.gov>; Anderson, Ryan <Ryan.Anderson@dep.nj.gov>
Subject: FW: Yaraghi Realty LLC, Block 58, Lot 1 Franklin Township, Warren County / Correspondence from National Park Service and USEPA re Musconetcong River Wild and Scenic Rivers designation

Hey Marco and Bob,

Please see below from the property owners attorney. Since NJDEP has nothing pending on this site, our council is recommending that we not attend, as is unclear if we have permission to access the site. Feel free to reach out to Mr. Yoskin independently, if we get consent to conduct a site inspection we would be happy to attend with you guys. Let me know if you need anything additional from us.

Patrick W. Ryan

Division of Land Resource Protection

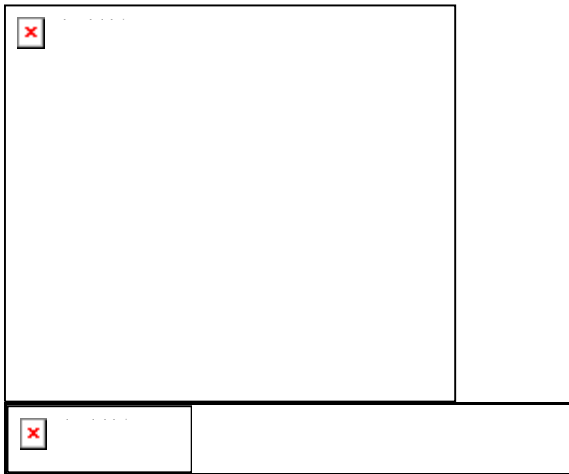
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Thanks, Pat

From: Yoskin, Neil <nyoskin@cullenllp.com>

Sent: Thursday, March 4, 2021 1:36 PM

To: Moriarty, Jennifer (LPS) <Jennifer.Moriarty@law.njoag.gov>; Cristin Mustillo <Cristin.Mustillo@law.njoag.gov>; Kenney, Paul T <paul_kenney@nps.gov>

Subject: [EXTERNAL] Yaraghi Realty LLC, Block 58, Lot 1 Franklin Township, Warren County / Correspondence from National Park Service and USEPA re Musconetcong River Wild and Scenic Rivers designation

Good afternoon:

As you know, we represent Yaraghi Realty. This is in furtherance of my recent conversation with DAG Moriarty regarding the above matter. I want to bring to the following to your attention:

- The wetland Letter of Interpretation (LOI) that is being called into question was issued in 2014, and was extended for an additional five years on

November 6, 2019 (see attached). The Freshwater Wetland rules, at NJAC 7:7A-4.6, provide that the recipient of an LOI is entitled to rely on that LOI for a period of five years unless it was determined to be based on inaccurate or incomplete information.

- The LOI was a presence/absence LOI, meaning that the determination was made that no wetlands as defined in New Jersey's Freshwater Wetland Protection Act were present on the site. The presence or absence of an intermittent stream is simply not relevant to whether or not wetlands are present.
- The water feature in question is a seasonal, erosional feature running through a farm field that is cultivated for much of the year. The December 21, 2020 letter from James Fosburgh of the National Park Service to EPA Region 2 Administrator Peter Lopez cited seven items of information as evidence that the feature was, in fact, an "intermittent stream". Again, whether a water feature is considered to be an intermittent stream is not relevant to whether or not wetlands are present.
- Not only does the NPS letter not put the term "intermittent stream" in any regulatory context, each and every one of those items was available to DEP at the time that it issued the original LOI and the 2019 LOI renewal, and there is no evidence that Department staff, who had the benefit of having made onsite inspections, acted in error.
- The NPS letter cites EPA's *Hydrologic Assessment Manual* as applying to this site. However, New Jersey DEP is required by Section 3 of the Freshwater Wetland Protection Act to use the Federal Interagency Manual for wetland delineation and identification when delineating wetlands and state open waters. This was a provision included in the Act at the insistence of EPA for delegation purposes, and the *Hydrologic Assessment Manual* cannot be substituted as a matter of law.
- The NPS letter cites Section 12(c) of Wild and Scenic Rivers Act as authority for the proposition that EPA can re-visit the LOI. In fact, Section 12 does nothing more than to direct the river - administering agency (presumably the

NPS) “to cooperate with EPA and state water quality agencies to address water quality concerns”.

- I suspect that the right and the ability of EPA to revisit an LOI determination is governed not by the Wild and Scenic Rivers Act but by the 1994 EPA/NJ delegation document. I suggest that you look to that document for guidance, as it almost certainly does not allow for the revisiting of an LOI more than seven years after the fact in the manner proposed here.
- As you know, local objectors to the project that is proposed for the subject property are litigating the validity of the flood hazard approvals issued by NJDEP. Those objectors are no doubt the source of the information on which the NPS and EPA are now acting. While there is nothing inherently wrong with that, my client, in reliance on the LOI, the LOI renewal and the flood hazard approvals, recently closed on the property, paying \$5.3 Million. Government agencies should not allow themselves to be used in this way to interfere with long-standing, established standards and procedures for the delineation of wetlands in New Jersey.

We find that the actions being taken by the NPS and EPA are highly improper, and that DEP’s acquiescence (by agreeing to conduct yet another site inspection) is equally improper. I therefore urge you to abandon this effort. I have asked you for contact information for the relevant federal officials involved in this effort, but that has not occurred. I am therefore copying the one individual whose e-mail address appears in the December 20, 2020 NPS letter.

Neil Yoskin

Partner

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